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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,987	03/24/2004	David A. Orbits	40062.9 IUSC1	6801
27488	7590	06/11/2009		
MERCHANT & GOULD (MICROSOFT)			EXAMINER	
P.O. BOX 2903			SAEED, USMAAN	
MINNEAPOLIS, MN 55402-0903				
			ART UNIT	PAPER NUMBER
			2166	
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			06/11/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/808,987

**Applicant(s)**

ORBITS ET AL.

**Examiner**

USMAAN SAEED

**Art Unit**

2166

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3, 4, 18-21, 25 and 27-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-4, 18-21, 25, 27-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/20/2009 has been entered.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 and 3-4 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. The language of the claims raises a question as to whether the claims are directed merely to an environment or machine which would result in a practical application producing a concrete useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.

Claims 1 and 3-4 are rejected because the method claims do not qualify as a statutory process. These claims are not statutory because a process must be tied to another statutory class. Thus to qualify as a statutory process, the claims should positively recite the other statutory class to which it is tied, for example by identifying the apparatus that accomplished the method steps.

To expedite a complete examination of the instant application the claims rejected under U.S.C. 101 (nonstatutory) above are further rejected as set forth below in anticipation of application amending these claims to place them within the four categories of invention.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 3, 4, 18-21, 25 and 27-31 are rejected under 35 U.S.C 103(a) as being unpatentable over McGuire et al. (U.S. Patent No. 6,493,871 B1) in view of Blackwell et al. (U.S. Patent No. 6,449,654).

As to claim 1, McGuire et al. discloses a computer-implemented method of replicating data using a manifest file, comprising:

creating a manifest file at a first member, the manifest file including an identifier of each of a plurality of resources of a resource group that exists at the first member, wherein the manifest file mandates that each of the plurality of resources of the resource group complete a transmission between the first member and a second member and exist on the second member before granting access to any of the plurality of resources of the resource group (See column 4, lines 15-36);

generating a change order on the first member, wherein the change order includes an indicator that the change order is associated with a manifest file (See column 12, lines 42-67, wherein it is suggested that "a manifest file is replaced with "said manifest file")

transmitting the change order to the second member (See column 12, lines 42-67);

on the second member, identifying, from the indicator, that the change order is associated with the manifest file;

causing the manifest file to be reproduced at the second member (See column 4, lines 15-36, wherein "manifest file" is read on "installation/update package");

in response to the manifest file being reproduced at second member, beginning a replication operation wherein the replication operation includes a transfer duration during which each of the plurality of resources of the resource group are being

transmitted between the first member and the second member (See column 10, lines 4-23); and

during the transfer duration (See column 7, lines 30-42):

identifying whether each resource identified in the manifest file has completed transmission and exists at the second member by comparing each resource of the resource group identified in the manifest file to a database that identifies resources of the second member (See column 8, lines 51-67);

when each resource of the resource group identified in the manifest file has not completed transmission and does not exist at the second member, preventing access to all resources of the group identified in the manifest file regardless of whether any resources of the group have completed transmission and exist on the second member (See column 12, lines 42-67 and see column 14, lines 42-67); and

only when each resource of the resource group identified in the manifest file has completed transmission and does exist at the second member, updating the system registry to include all the resources of the resource group (See column 14, lines 42-67).

McGuire et al. teaches the elements of claim 1 as noted above but does not explicitly teach complete a transmission between the first member and a second member and exist on the second member before granting access to any of the plurality of resources of the resource group.

However, Blackwell et al. teaches complete a transmission between the first member and a second member and exist on the second member before granting

access to any of the plurality of resources of the resource group (see column 15, lines 49-67 and column 16, lines 1-29 and Figure 9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because Blackwell et al.'s teaching would have allowed McGuire et al. to provide a system and method for transmitting and receiving data that can transmit data over a plurality of data paths simultaneously and that provides a plurality of transmission queues which enable data transmissions to be continuously prioritized and which do not cause bottlenecking of data.

As to claim 3, McGuire et al. discloses wherein the identifier of each resource of the resource group includes a version identifier associated with the resource (See column 7, lines 8-20).

As to claim 4, McGuire et al. discloses wherein identifying whether each resource of the resource group has completed transmission and exists at the second member includes comparing the version identifier of the resource with another version identifier associated with another copy of the resource stored at the second member (See column 14, lines 12-28).

As to claims 18, and 25, McGuire et al. discloses a computer readable storage medium having compute executable instructions that facilitates a replication of data using a manifest file, comprising:

receiving a change order on a second member wherein the change order includes an indicator that the change order is associated with a manifest file, wherein the manifest file includes an identifier of each of a plurality of recourses of a resource group that exists at a first member, wherein the manifest file mandates that each of the plurality of the resources of the resource group complete a transmission between the first member and a second member and exist on the second member before granting access to any of the plurality of resources of the resource group (See column 14, lines 42-67, and see column 15, lines 1-4);

identifying, from the indicator, that the change order is associated with the manifest file (See corresponding rejections in claim 1 above);

causing the manifest file to be reproduced at the second member (See corresponding rejections in claim 1 above);

in response to the manifest file being reproduced at second member, beginning a replication operation wherein the replication operation includes a transfer duration during which each of the plurality of resources of the resource group are being transmitted between the first member and the second member (See corresponding rejections in claim 1 above); and

during the transfer duration (See corresponding rejections in claim 1 above):



identifying whether each resource identified in the manifest file has completed transmission and exists at the second member by comparing each resource of the resource group identified in the manifest file to a database that identifies resources of the second member (See corresponding rejections in claim 1 above);

when each resource of the resource group identified in the manifest file has not completed transmission and does not exist at the second member, preventing access to all resources of the group identified in the manifest file regardless of whether any resources of the group have completed transmission and exist on the second member (See corresponding rejections in claim 1 above); and

when each resource of the resource group identified in the manifest file has completed transmission and does exist at the second member, providing access to all the resources of the resource group (See corresponding rejections in claim 1 above).

McGuire et al. teaches the elements of claim 18 and 25 as noted above but does not explicitly teaches complete a transmission between the first member and a second member and exist on the second member before granting access to any of the plurality of resources of the resource group.

However, Blackwell et al. teaches complete a transmission between the first member and a second member and exist on the second member before granting access to any of the plurality of resources of the resource group (see column 15, lines 49-67 and column 16, lines 1-29 and Figure 9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because Blackwell

et al.'s teaching would have allowed McGuire et al. to provide a system and method for transmitting and receiving data that can transmit data over a plurality of data paths simultaneously and that provides a plurality of transmission queues which enable data transmissions to be continuously prioritized and which do not cause bottlenecking of data.

As to claim 19, McGuire et al. discloses wherein the manifest file further comprises a globally unique identifier for each resource of the resource group (See column 9, lines 10-24, wherein a version is considered to be a form of globally unique identifier).

As to claim 20, McGuire et al. discloses wherein the manifest file further comprises version identifier for each resource of the resource group (See column 9, lines 10-24).

As to claim 21, McGuire et al. discloses wherein the manifest file includes an expiration identifier that identifies an amount of time for replicating each resource of the resource group (See column 13, lines 6-24, wherein it is inherent that time is an attribute of transfer that is of concern and can easily be measured).

As to claim 27, McGuire et al. discloses wherein the second member is configured to replicate the manifest file by fetching the manifest file (See column 13, lines 6-24).

As to claim 28, McGuire et al. discloses wherein the second member is configured to mark the change order as handled and store the change order in an outbound log (See column 10, lines 44-67).

As to claim 29, McGuire et al. discloses wherein the second member is further configured to disseminate the change order to a third member (See column 15, lines 5-15, wherein its inherent in a networked server client environment, multiple clients can receive the update package).

As to claim 30, McGuire et al. discloses wherein the manifest file includes an execution order (See column 10, lines 44-67).

As to claim 31, McGuire et al. discloses wherein the manifest file includes a security token (See column 9, lines 30-32).

As to claims 32, 34, and 36 McGuire et al. discloses wherein the manifest file further includes an option identifier, wherein the option identifier causes an application associated with the group to launch only if resource version levels of the resource group

on the second member match resource version levels of the resource group indicated in the manifest file (See column 9, lines 32-37).

As to claims 33, 35 and 37 McGuire et al. discloses wherein the manifest file further includes an option identifier, wherein the option identifier causes an application associated with the resource group to launch if version levels of the resource group on the second member are greater than resource version level of the resource group indicated in the manifest file (See column 9, Lines 9-16, 39-51 and column 10, lines 4-23).

#### ***Response to Arguments***

4. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

In these arguments applicant relies on the amended claims and not the original ones.

In column 15, lines 49-67 and column 16, lines 1-29 and Figure 9 Blackwell et al. the newly cited reference teaches completing the transmission of all the files before performing any command associated with each file on the manifest. If there are any files missing or they are corrupt, it wait for the missing and corrupt files to be retransmitted and then later performing commands associated with the each file on the manifest.

Claims must be given the broadest reasonable interpretation during examination and limitations appearing in the specification but not recited in the claim are not read into the claim (See M.P.E.P. 2111 [R-I]).

### ***Contact Information***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to USMAAN SAEED whose telephone number is (571)272-4046. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on (571)272-3978. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/808,987

Page 13

Art Unit: 2166

June 4, 2009

Art Unit: 2166

/Hosain T Alam/

Supervisory Patent Examiner, Art Unit 2166